

**BEFORE THE DIRECTOR OF THE  
WASHINGTON STATE DEPARTMENT OF AGRICULTURE**

**Proposal to Amend the Washington Hop  
Commission Marketing Order (WAC 16-532)** )  
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**Findings, Conclusion, and  
RECOMMENDED DECISION**

**INTRODUCTION**

This document is a summary of the proposal to amend the Washington Hop Commission Marketing Order. It contains background information on the need for the amendments, summarizes the process that has been followed, recaps the testimony at the public hearing, lists the Director's findings, and recommends the proposal be sent to a referendum of hop producers.

**BACKGROUND AND TECHNICAL REPORT**

During the 2004 harvest season for hops, some individuals interpreted the Washington Hop Commission Marketing Order relating to mandatory inspection, codified under WAC 16-532-035, as allowing baled hops to be inspected utilizing the submitted sample system instead of having baled hops officially sampled. The Hop Commission has petitioned the Director requesting a proposed change in its Marketing Order that clarifies baled hops must be officially sampled by a Washington State Department of Agriculture inspector consistent with current industry practice.

The Washington Hop Commission has also petitioned the Director to increase its assessment. Assessments were last increased in 1991. A referendum was passed in 2005 to decrease the assessment rate by \$0.70 per bale for the purpose of discontinuing financial support for the promotion program that was carried out by Hop Growers of America. This assessment rollback also eliminated funding for the hop industry's plant protection program, which includes pesticide registration, Section 18s, and international harmonization efforts. Other inflationary pressures from the past 15 years, coupled with a substantial acreage decrease in the state have left the Commission with inadequate funding to continue existing programs. An assessment increase of \$.032 per bale is proposed to help cover this shortfall.

At the public hearing held on February 23, 2006, Ann George, Administrator for the Washington Hop Commission, presented the above background information in the form of a technical report. The Marketing Order amendments were explained and an opportunity for questions was provided.

The specific amendments to the Marketing Order are shown in Attachment "A".

**PROCEDURAL STEPS**

This matter came before the Director of the Washington State Department of Agriculture (WSDA) pursuant to a petition filed by the Washington Hop Commission requesting amendments to the Hop Marketing Order (WAC 16-532) under the authority set forth in RCW 15.65, Washington State Agricultural Commodity Boards Act.

On January 18, 2006, WSDA filed with the Washington State Code Reviser a Notice of Proposed Rulemaking (CR-102) requesting comments on the proposed Marketing Order amendments. The notice was published in the *Washington State Register* on February 1, 2006).

Also, on February 1, 2006, a notice about the petition to amend the Marketing Order and notice of the public hearing on the proposed amendments was mailed to affected hop producers and interested parties. A Notice of Public Hearing was published in the *Yakima Herald-Republic* on February 1 and 2, 2006.

Pursuant to RCW 15.65.070, a public hearing was held on February 23, 2006, beginning at 1:00 p.m. at the Washington Hop Commission Office, 301 West Prospect Place, Moxee, WA. Written comments on the proposal were accepted through the close of business (5:00 p.m.) on February 23, 2006.

### **TESTIMONY ON AMENDMENTS**

Under RCW 15.65.070 through 15.65.170 and RCW 34.05, Administrative Procedure Act, the Department collected testimony to determine whether affected producers or interested parties supported the proposed amendments to the Hop Marketing Order.

Supporters of the proposed amendments provided the following comments:

#### **Inspection Requirement**

- I am a Toppenish hop grower and a member on the Washington Hop Commission. I am serving as an official representative of that board. On December 12, 2005, the Commission voted to proceed with a referendum to seek a change in the mandatory inspection language to insure that all baled hops are officially sampled.

#### **Assessment Increase**

- I am a Toppenish hop grower and a member on the Washington Hop Commission. I am serving as an official representative of that board. On December 12, 2005, the Commission voted to proceed with a referendum to seek a \$0.32 increase in the assessment rate.

WSDA received no comments opposed to the proposed amendments.

A total of 3 individuals signed in at the hearing. Out of those 2, 1 provided oral testimony. WSDA received no written testimony on the proposed amendments. A tally of the attendance at the hearing and the positions of those providing oral testimony on the proposed amendments are as follows:

- One individual signed in at the hearing and provided oral testimony:
  - 1 supported the proposed amendments
  - 0 opposed the proposed amendments
  - 0 indicated no position
- Of the 2 individuals who signed in at the hearing and who did not provide testimony:
  - 1 supported the proposed amendments
  - 0 opposed the proposed amendments
  - 1 indicated no position

### **FINDINGS AND CONCLUSION**

Based on the entire record, including facts, testimony, and evidence presented and received at the public hearing, any written comments that may have been received by WSDA, matters of which the Director may take official notice under RCW 15.65.100, including the history and background of the Washington Hop Commission, the Director makes the following findings and conclusion:

1. The Washington Hop Commission was formed under a Marketing Order approved by a vote of the affected producers pursuant to the Washington State Agricultural Commodity Boards Act (Chapter

15.65 RCW) that became effective on August 15, 1964.

2. The Marketing Order establishing the Washington Hop Commission (WAC 16-532) currently provides the following purposes:

***WAC 16-532-030 Marketing order purposes.*** *The order is to promote the general welfare of the state, to enable producers of hops to help themselves establish orderly, fair, sound, efficient, unhampered marketing and standardization of hops and regulate unfair trade practices within the industry.*

*(1) To carry out the purposes of the order the board may provide for a program in one or more of the following areas:*

*(a) Establish plans and conduct programs for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for hops. Such programs shall be directed toward increasing the sale of hops without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of hops nor disparage the quality, value, sale or use of any other agricultural commodity.*

*(b) Provide for research in the production, processing and/or distribution of hops and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried on by experiment stations of Washington State University, but if in the judgment of the board said experiment stations do not have the facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the board.*

*(c) Provide by rules and regulations for:*

*(i) Establishing uniform labels and labeling requirements for hops or any products thereof, requiring producers, handlers and other persons to conform to standards for the placing of labels, trademarks, insignia or brands on bales or packages, provided, that all licensed hop dealers or brokers are entitled to use on the face of their product any particular trademark, insignia, brand or label that they may now have or will have. That established brands, labels, trademarks or insignias may be properly used in selling or commercially disposing of hops and hop products or in offering the same for sale, advertising and/or delivering said hops or hop products;*

*(ii) Providing for inspection and enforcement to ascertain and effectuate compliance;*

*(iii) Establishing rules and regulations respecting the foregoing.*

*(d) Prohibit and/or otherwise regulate any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, hops or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his customer or his supplier or of otherwise dealing or trading with him or of diverting trade from a competitor, to wit:*

*(i) Paying rebates, commissions or unearned discounts;*

*(ii) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier or other person;*

*(iii) Discriminating between customers, or suppliers of a like class;*

*(iv) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons.*

*(e) The board may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices.*

*(f) Provide for marketing information and services to affected producers for the verification of grades, standards, weights, tests and sampling of quality and quantity of hops purchased by handlers from affected producers.*

*(g) Participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030(29) or any agricultural chemical which is of use or potential use in producing hops.*

3. Pursuant to RCW 15.65, the Washington Hop Commission filed a petition requesting amendments to the Hop Marketing Order (WAC 16-532) on December 21, 2005.
4. Pursuant to RCW 15.65 and RCW 34.05, WSDA issued notices, held a hearing, and collected testimony to determine whether affected producers or interested parties supported the proposed amendments to the Hop Marketing Order.
5. The Commission determined that it was appropriate to proceed with a referendum on a change in the mandatory inspection language to insure that all baled hops are officially sampled. The Director finds that it is reasonable to send the change in language on inspections required to referendum.
6. As to the proposed assessment increase, the Commission determined that it was appropriate to proceed with a referendum of affected hop producers to determine whether to increase the assessment rate. The Director finds it is reasonable to send the issue of whether to increase the assessment rate to referendum.
7. The Director finds that it is appropriate to include the proposed amendments as they are detailed in Attachment "A" in the proposal to amend the Marketing Order. They include:
  - Amend WAC 16-532-035, Inspection required.
  - Amend WAC 16-532-040, Assessments and collections.
8. The Director finds that it is in the best interest of the hop industry and the public interest that the hop industry remains a viable agricultural industry in Washington State.
9. The Director concludes that the evidence and the record support a finding that the proposed amendments effectuate the declared policies and purposes of RCW 15.65 and WAC 16-532.

### **RECOMMENDED DECISION**

**NOW, THEREFORE**, based on the entire record in this matter, the Director enters the following Recommended Decision:

The proposed language change to the Hop Marketing Order (WAC 16-532) on inspections required for baled hops will be sent to a referendum pursuant to RCW 15.65.160.

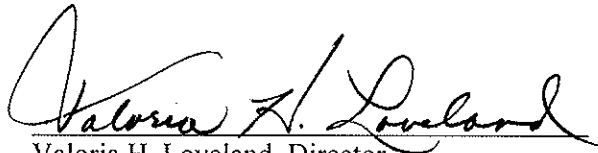
The proposal to increase the assessment rate on all varieties of hops from \$1.80 per affected unit to \$2.12 per affected unit will be sent to a referendum pursuant to RCW 15.65.160.

A ballot containing both proposals will be mailed to all hop producers on the list of affected producers.

If the referendum results approve the change to language on inspections required in the Hop Marketing Order, the proposal will be adopted on or about July 17, 2006 and the proposal will become effective August 17, 2006. If the referendum results defeat the change to language on inspections required to the Hop Marketing Order, no further action will be taken on the petition.

If the referendum results approve the assessment rate increase, the proposal will be adopted on or about July 17, 2006 and the assessment rate decrease will become effective August 17, 2006. If the referendum results defeat the assessment rate decrease, the current assessment rate will remain in effect.

**DATED** this 8th day of March, 2006.

  
Valoria H. Loveland, Director  
Washington State Department of Agriculture

### **STATEMENT OF RIGHTS AND FURTHER PROCESS**

Under RCW 15.65.110, all interested parties shall have a period of not less than ten (10) days to file objections or exceptions to this Recommended Decision with the Director. All objections or exceptions must be received at the following address **no later than 5:00 p.m. on March 24, 2006:**

Deborah Axelson, Commodity Commission Program  
WSDA, Administrative Regulations Program  
PO Box 42560  
Olympia, WA 98504

FAX: (360) 902-2092  
Email: [daxelson@agr.wa.gov](mailto:daxelson@agr.wa.gov)

The Director will take all objections or exceptions received into consideration when making her Final Decision. The Final Decision may be the same as the Recommended Decision or it may be revised in light of the objections or exceptions.